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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JORDAN ROSENBERG,

Plaintiff and Appellant,

v.

CHRISTIAN CHURCH HOMES, INC.

et al.,

Defendants and Respondents.

A155786

(Alameda County
Super. Ct. No. RG17849292)

Plaintiff Jordan Rosenberg appeals from a trial court order declaring him to be a vexatious litigant. His sole argument on appeal is that the trial court lacked jurisdiction to enter the order because he had voluntarily dismissed his action before the order was entered. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Rosenberg is a former resident of an apartment complex managed by defendant Christian Church Homes (CCH), for which defendant Don Stump is president and chief executive officer. Rosenberg initiated this case by suing CCH and Stump, alleging they had promised him a better apartment than the one they ultimately rented to him. He sought damages in the amount of \$1 million “or more.” CCH and Stump filed a demurrer to the original complaint, and the demurrer was sustained. Rosenberg then filed a first amended complaint, and defendants filed another demurrer, which was also sustained. Rosenberg then filed a second amended complaint, to which defendants filed a third demurrer.

On June 7, 2018, before the trial court ruled on the third demurrer, CCH and Stump filed a motion to have Rosenberg declared a vexatious litigant under Code of Civil Procedure section 391.3. They pointed out that in the past seven years Rosenberg had filed 10 cases, many of which had led to separate appeals. Shortly thereafter, without waiting for rulings on the third demurrer or the motion to have him declared a vexatious litigant, Rosenberg filed a request to dismiss the action with prejudice. The dismissal was entered by the clerk on June 18, 2018.

The trial court nonetheless proceeded to hear the motion to declare Rosenberg a vexatious litigant. A hearing was held on July 3, 2018, and the court issued a tentative decision granting the motion. A second hearing was held on September 4, 2018, after which the court adopted the tentative decision as its final order.

II. DISCUSSION

Rosenberg's only argument on appeal is that the trial court lacked jurisdiction to declare him a vexatious litigant because he had voluntarily dismissed the action before the trial court entered its order. We are not persuaded. In *Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009 (*Pittman*), the Second District Court of Appeal held that a party's voluntary dismissal of an action does not prevent a trial court from ruling on a motion to declare the party a vexatious litigant. (*Id.* at pp. 1024–1025.) We agree with *Pittman*'s reasoning and holding, and we conclude that the decision controls the outcome here.

The parties agree that a voluntary dismissal of an action generally deprives a trial court of jurisdiction (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 784), and they agree that there are exceptions to this rule allowing the court to enter post-dismissal orders regarding costs, attorney fees, and sanctions. Rosenberg argues, however, that there is no vexatious-litigant exception allowing a trial court to enter a post-dismissal order declaring a party a vexatious litigant, while CCH and Stump disagree. CCH and Stump have the better argument.

The Second District directly addressed this issue in *Pittman*. It held that a trial court retains jurisdiction to enter a post-dismissal order declaring a party a vexatious

litigant because such an order is similar to one imposing sanctions: “Like a motion for attorney fees or sanctions, a motion to declare a self-represented plaintiff a vexatious litigant deals with an ancillary issue and has no bearing on the finality of the judgment or dismissal. Retaining jurisdiction to decide a vexatious litigant motion is consistent with the purpose of the statutes, which are ‘designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and other litigants.’ [Citation.] A dismissal does not rectify the harm already done by the filing of a groundless action. Nor does the dismissal extinguish the court’s interest in deterring and punishing the waste of judicial resources. A contrary rule would allow a litigant to strategically escape a vexatious litigant finding altogether by dismissing a party or an action prior to a ruling on the vexatious litigant motion and then refiling his or her claims in a later proceeding. . . . To fulfill the statute’s aim of protecting future potential litigants, the ability to declare an individual a vexatious litigant must survive even after the action has been dismissed.” (*Pittman, supra*, 20 Cal.App.5th at pp. 1024–1025.)

We see no reason to deviate from this analysis and holding.¹ Accordingly, we conclude that the trial court retained jurisdiction to declare Rosenberg a vexatious litigant even though he had filed a voluntary dismissal of his action before the court’s ruling.

¹ We reject Rosenberg’s argument that the appellate court’s failure to discuss the vexatious-litigant exception in *Aetna Casualty & Surety Co. v. Humboldt Loaders, Inc.* (1988) 202 Cal.App.3d 921 means there is no such exception. The exception was not discussed because it did not apply to the circumstances of that case, which involved the imposition of sanctions against a plaintiff for having exercised its right to dismiss a complaint. (*Id.* at p. 932.) We also reject Rosenberg’s argument that the Supreme Court rejected the vexatious-litigant exception in *Shalant v. Girardi* (2011) 51 Cal.4th 1164. That case held that a vexatious litigant could represent himself in propria persona after his attorney withdrew from a case originally filed by the attorney. (*Id.* at p. 1168.) It did not involve the question of whether a party’s voluntary dismissal divests a trial court of jurisdiction to consider a motion to have the party declared a vexatious litigant.

III. DISPOSITION

The September 4, 2018 order declaring Rosenberg a vexatious litigant is affirmed.
Respondents are awarded their costs on appeal.

Humes, P.J.

We concur:

Banke, J.

Sanchez, J.